Supreme Court, U.S.
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No. 84-1987

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

WILHELMINA MOORE,

Petitioner,

vs.

HENRY E. BONNER, individually and in his official capacity as superintendent of schools for Berkeley County and Chairman of the Berkeley County Board of Education; MARVIN WIGGINS, JOSEPH MYERS, ROY STRICKLAND, HARCLD STALEY, GRAYDON GRAY, JAMES BARRY, CAROLYN LEWIS, J.P. PEAGLER, DOROTHY BRYAN, AND DAVID FASHION, each individually and each in his or her official capacity as a member of the Berkeley County Board of Education and the Berkeley County School District,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RESPONDENTS' APPENDIX I

KENNETH L. CHILDS
EMMA RUTH ST. PIERRE
Counsel of Record
Post Office Box 11367
Columbia, S.C. 29211
(803) 254-4035

R. MARKLEY DENNIS, JR.
Post Office Drawer 1174
Moncks Corner, S.C. 29461
(803) 761-8111

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APPENDIX I

ARTICLE 5

EMPLOYMENT AND DISMISSAL

§ 59-25-410. Notification of employment for ensuing year; notification of assignment.

On or before April fifteenth of each year, the boards of trustees of the several school districts shall decide and notify, in writing, the teachers, as defined in § 59-1-130 of the 1976 Code, in their employ concerning their employment for the ensuing year. If the board, or the person designated by it, fails to notify a teacher who has been employed by a school district for a majority of the current school year of his status for the ensuing year, the teacher shall be deemed to be reemployed for the ensuing year and the board shall issue a contract to such teacher as though the board had reemployed such teacher in the usual manner.

Notices of intent not to renew an employment contract shall be given in writing no later than April fifteenth of each year.

On or before August fifteenth the superintendent, principal, where applicable, or supervisor shall notify the teacher of his tentative assignment for the ensuing school year.

This section shall not apply to any teacher whose contract of employment or dismissal is under appeal under § 59-25-450.

HISTORY: 1976 Act. No. 634 § 1.

§ 59-25-420. Teacher required to notify board of acceptance; opportunity for hearing if not reemployed.

Any teacher who is reemployed by written notification pursuant to § 59-25-410 shall by April twenty-fifth first notify the board of trustees in

writing of his acceptance of the contract. Failure on the part of the teacher to notify the board of acceptance within the specified time limit shall be conclusive evidence of the teacher's rejection of the contract.

Any teacher, receiving a notice that he will not be reemployed for the ensuing year, shall have the same notice and opportunity for a hearing provided in subsequent sections for teachers dismissed for cause during the school year.

HISTORY: 1962 Code § 21-362; 1974 (58) 2343.

§ 59-25-430. Dismissal of teachers; grounds; opportunity for hearing; suspension pending resolution of charges.

Any teacher may be dismissed at any time who shall fail, or who may be incom-

petent, to give instruction in accordance with the directions of the superintendent, or who shall otherwise manifest an evident unfitness for teaching; provided, however, that notice and an opportunity shall be afforded for a hearing prior to any dismissal. Evident unfitness for teaching is manifested by conduct such as, but not limited to, the following: persistent neglect of duty, willful violation of rules and regulations of district board of trustees, drunkenness, conviction of a violation of the law of this State or the United States, gross immorality, dishcnesty, illegal use, sale or possession of drugs or narcotics.

Notwithstanding the provisions of § 59-25-450, when any teacher is charged with a violation of the law of this State or the United States which upon conviction may lead to, or be cited as a reason for, dismissal, such teacher may be

suspended pending resolution of the charges and receive his usual compensation during the suspension period, such compensation not to exceed the term of his teaching contract. If the teacher is convicted, including pleading guilty or nolo contendere to the charges, he may then be subject to dismissal proceedings. If no conviction results, his suspension shall be terminated.

HISTORY: 1976 Act. No. 634 § 2.

§ 59-25-440. Written notice to teacher of possible dismissal; school administrator required to make reasonable effort to assist teacher in corrective measures; reasonable time for improvement required.

Whenever a superior, principal, where applicable, or supervisor charged with the supervision of a teacher finds it necessary to admonish a teacher for a

reason that he believes may lead to, or be cited as a reason for, dismissal or cause the teacher not to be reemployed he shall: (1) bring the matter in writing to the attention of the teacher involved and make a reasonable effort to assist the teacher to correct whatever appears to be the cause of potential dismissal or failure to be reemployed and, (2) except as provided in § 59-25-450, allow reasonable time for improvement.

HISTORY: 1976 Act. No. 634 § 3.

§ 59-25-450. Suspension of teachers; reinstatement.

Whenever a superintendent has reason to believe that cause exists for the dismissal of a teacher and when he is of the opinion that the immediate suspension of the teacher is necessary to protect the well-being of the children of the district or is necessary to remove sub-

stantial and material disruptive influences in the educational process, in the best interest of the children in the district, the superintendent may suspend the teacher without notice or without a hearing. The superintendent shall notify the teacher in writing of the suspension. Such written notice shall include the cause for suspension and the fact that a hearing before the board is available to the teacher upon request provided such request is made in writing within fifteen days as prescribed by § 59-25-470.

The salary of a suspended teacher shall cease as of the date the board sustains the suspension. If sufficient grounds for suspension are not subsequently found, the teacher shall be reinstated without loss of compensation.

HISTORY: 1976 Act No. 634 § 4.

§ 59-25-460. Notice of dismissal; conduct of hearing.

No teacher shall be dismissed unless written notice specifying the cause of dismissal is first given the teacher by the District Board of Trustees and an opportunity for a hearing has been afforded the teacher. Such written notice shall include the fact that a hearing before the board is available to the teacher upon request provided, such request is made in writing within fifteen days as prescribed by § 59-25-470. Any such hearing shall be public unless the teacher requests in writing that it be private. The District Board of Trustees may issue subpoenas requiring the attendance of witnesses at any hearing and, at the request of the teacher against whom a charge is made, shall issue such subpoenas, but it may limit the number of witnesses to be subpoenaed in behalf of the

teacher to not more than ten. All testimony at any hearing shall be taken under oath. Any member of the board may administer oaths to witnesses. The board shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all of the testimony. If the board's decision is favorable to the teacher, the board shall pay the cost of the reporter's attendance and services at the hearing. If the decision is unfavorable to the teacher, one-half of the cost of the reporter's attendance and services shall be borne by the teacher. Either party desiring a transcript of the hearing shall pay for the costs thereof.

HISTORY: 1976 Act No. 634 § 5.

§ 59-25-470. Request for hearing; time and place of hearing; rights of teacher; determination by board.

Within fifteen days after receipt of notice of suspension or dismissal, a teacher may serve upon the chairman of the board or the superintendent a written request for a hearing before the board. If the teacher fails to make such a request, or after a hearing as herein provided for, the District Board of Trustees shall take such action and shall enter such order as it deems lawful and appropriate. The hearing shall be held by the board not less than ten nor more than fifteen days after the request is served, and a notice of the time and place of the hearing shall be given the teacher not less than five days prior to the date of the hearing. The teacher has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present any and all defenses to the charges. The board

shall order the appearance of any witness requested by the teacher. The complainants shall initiate the introduction of evidence in substantiation of the charges. Within ten days following the hearing, the board shall determine whether the evidence showed good and just cause for the notice of suspension or dismissal and shall render its decision accordingly, either affirming or withdrawing the notice of suspension or dismissal.

HISTORY: 1976 Act. No. 634 § 6.

§ 59-25-480. Appeals; costs and damages.

The decision of the district board of trustees shall be final, unless within thirty days thereafter an appeal is made to the court of common pleas of any county in which the major portion of such district lies.

Notice of such appeal and the grounds thereof shall be filed with the district board of trustees. The district board shall, within thirty days thereafter, file a certified copy of the transcript record with the clerk of such court. Any party may appeal to the Supreme Court from the court of common pleas in the same manner as provided by law for appeals from the circuit court to the Supreme Court. If the decision of the board is reversed on appeal, on a motion of either party the trial court shall order reinstatement and shall determine the amount for which the board shall be liable for actual damages and court costs. In no event shall any liability extend beyond two years from the effective date of dismissal. Amounts earned or amounts earnable with reasonable diligence by the person wrongfully

suspended shall be deducted from any back pay.

HISTORY: 1962 Code § 21-368; (58) 2343.

§ 59-25-490. Depositions.

Any party to such proceedings may cause to be taken the depositions of witnesses within or without the State and either by commission or de bene esse. Such depositions shall be taken in accordance with and subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the court of common pleas; and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification thereof and matters of practice relating thereto shall apply.

HISTORY: 1962 Code § 21-369; 1974 (58) 2343.

§ 59-25-500. Service of subpoenas; witness fees.

The county sheriffs and their respective deputies shall serve all subpoenas of the district board and shall receive the same fees as are now provided by law for like service. Each witness who appears in obedience to such subpoenas shall receive for attendance the fees and mileage of witnesses in civil cases in courts of the county in which the hearing is held.

HISTORY: 1962 Code § 21-370; 1974 (58) 2343.

§ 59-25-510. Service of notices.

All notices to be given under this article by the district board shall be given to both parties and the notices herein required to be given by a party shall be served upon the opposite party prior to the filing thereof. All such

notices may be served by registered mail.
HISTORY: 1962 Code § 21-370.1; 1974 (58) 2343.

§ 59-25-520. Powers and duties of court of common pleas; warrant for production of witnesses.

The court of common pleas shall, on application of the district board, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records and shall have the power to punish as for contempt of court, by a fine or imprisonment or both, the unexcused failure or refusal to attend and give testimony or produce books, papers and records as may have been required in any subpoena issued by the district board. The district board may issue to the sheriff of the county in which any hearing is held a warrant re-

quiring him to produce at the hearing any witness who shall have ignored or failed to comply with any subpoena issued by the district board and duly served upon such witness. Such a warrant shall authorize the sheriff to arrest and produce at the hearing such witness, and it shall be his duty to do so; but the failure of a witness so to appear in response to any such subpoena may be excused on the same grounds as provided by law in the courts of this State as to the attendance of witnesses and jurors.

HISTORY: 1962 Code § 21-370.2; 1974 (58) 2343.

§ 59-25-530. Unprofessional conduct; breach of contract.

Any teacher who fails to comply with the provisions of his contract without the written consent of the school board shall be deemed guilty of unprofessional

conduct. A breach of contract resulting from the execution of an employment contract with another board within the State without the consent of the board first employing the teacher makes void any subsequent contract with any other school district in South Carolina for the same employment period. Upon the formal complaint of the school board, substantiated by conclusive evidence, the State board shall suspend or revoke the teacher's certificate, for a period not to exceed one calendar year. State education agencies in other states with reciprocal certification agreements shall be notified of the revocation of the certificate.